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3 UNITED STATES DISTRICT COURT  
4 WESTERN DISTRICT OF WASHINGTON  
5 AT TACOMA

6 NIKOLAY SHCHERENKOV,

7 Petitioner,

8 v.

9 STATE OF WASHINGTON,

10 Respondent.

No. C10-5076 RBL/KLS

ORDER DECLINING TO SERVE  
PETITION AND GRANTING LEAVE TO  
AMEND

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12 Petitioner, Nikolay Shcherenkov, is a state prisoner currently incarcerated at the Pierce  
13 County Jail, located in Tacoma, Washington. This matter is before the Court on petitioner's  
14 petition for writ of habeas corpus filed with this Court pursuant to 28 U.S.C. § 2241. The Court,  
15 having reviewed the petition and the balance of the record, hereby finds and **ORDERS:**

16 On February 8, 2010, Mr. Shcherenkov filed his petition for writ of habeas corpus  
17 pursuant to 28 U.S.C. § 2241. Dkt. 2. The exhaustion of state court remedies is a prerequisite to  
18 the granting of a petition for writ of habeas corpus. 28 U.S.C. § 2254(b)(1). If exhaustion is to  
19 be waived, it must be waived explicitly by respondent. 28 U.S.C. § 2254(b)(3). A waiver of  
20 exhaustion, thus may not be implied or inferred. A petitioner can satisfy the exhaustion  
21 requirement by providing the highest state court with a full and fair opportunity to consider all  
22 claims before presenting them to the federal court. *Picard v. Connor*, 404 U.S. 270, 276 (1971);  
23 *Middleton v. Cupp*, 768 F.2d 1083, 1086 (9th Cir. 1985). Full and fair presentation of claims to  
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ORDER DECLINING TO SERVE PETITION AND GRANTING LEAVE TO AMEND - 1

1 the state court requires “full factual development” of the claims in that forum. *Kenney v.*  
2 *Tamayo-Reyes*, 504 U.S. 1, 8 (1992).

3 It is not enough that all of the facts necessary to support the federal claim were before the  
4 state courts, or that a somewhat similar state law claim was made. *Duncan v. Henry*, 513 U.S.  
5 364, 366 (1995) (citing *Picard v. Connor*, 404 U.S. 270 (1971) and *Anderson v. Harless*, 459  
6 U.S. 4 (1982)). A federal claim is “fairly and fully” presented to the state courts if the claim is  
7 presented “(1) to the proper forum, (2) through the proper vehicle, and (3) by providing the  
8 proper factual and legal basis for the claim.” *Insyxiengmay v. Morgan*, 403 F.3d 657, 668 (9th  
9 Cir. 2005) (internal citations omitted). The petitioner “must alert the state courts to the fact that  
10 he is asserting a federal claim in order to fairly and fully present the legal basis of the claim.” *Id.*

11 The claim must be fairly presented in “each appropriate state court,” that is, at each level  
12 of state review, so as to alert the state “to the federal nature of the claim,” and to give it the  
13 “opportunity to pass upon and correct” alleged violations of the petitioner’s federal rights.  
14 *Baldwin v. Reese*, 541 U.S. 27, 29 (2004) (citations and internal quotation marks omitted); see  
15 also *Ortberg v. Moody*, 961 F.2d 135, 138 (9th Cir. 1992). The federal basis of the claim,  
16 furthermore, must be made “explicit” in the state appeal or petition, “either by specifying  
17 particular provisions of the federal Constitution or statutes, or by citing to federal case law.”  
18 *Insyxiengmay*, 403 F.3d at 668; *Baldwin*, 541 U.S. at 33.

19 In his proposed petition for writ of habeas corpus under 28 U.S.C. § 2241, Mr.  
20 Shcherenkov indicates that he was sentenced on November 23, 2009 after pleading guilty to third  
21 degree assault, and that he did not appeal from the judgment of conviction. Dkt. 2, pp. 1-2  
22 (CM/ECF page numbering).

1 In his federal habeas petition, Mr. Shcherenkov argues that he was misinformed and was  
2 coerced into a plea bargain. Dkt. 2, p. 5. Mr. Shcherenkov does not, however, indicate that these  
3 grounds for relief have been properly exhausted in state court. Specifically, the petition does not  
4 show that Mr. Shcherenkov has presented his claims for relief to the Washington Court of  
5 Appeals and the Washington State Supreme Court.

6 Accordingly, the court shall not serve the petition on respondent[s]. In addition, Mr.  
7 Shcherenkov shall file by no later than **March 15, 2010**, an amended petition under 28 U.S.C. §  
8 2241 showing that his grounds for federal relief have been properly exhausted in state court or  
9 show cause why this matter should not be dismissed.

10 The Clerk shall send a copy of this Order to Mr. Shcherenkov.

11 **DATED** this 23rd day of February, 2010.

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16 Karen L. Strombom  
17 United States Magistrate Judge  
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